

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA

12 CAMERON PIERCE and PATRICIA  
13 PIERCE, husband and wife; KAREN KIRBY,  
14 a single woman; GREGORY SHERMAN and  
15 PAULA SHERMAN, husband and wife,  
16 MICHAEL LEPAGE and GERTRUDE  
LEPAGE, husband and wife; on behalf of  
themselves and a class of similarly situated  
individuals,

17 Plaintiffs,

18 v.

19 NOVASTAR MORTGAGE, INC., a foreign  
corporation,

20 Defendant.

CASE NO. C05-5835RJB

ORDER DENYING  
DEFENDANT NOVASTAR  
MORTGAGE INC.'S MOTION  
FOR RECONSIDERATION

21  
22  
23 This matter comes before the Court on Defendant NovaStar Mortgage, Inc.'s Motion for  
24 Reconsideration (Dkt. 196). The Court has considered the motion and the remainder of the file  
25 herein.

26  
ORDER  
Page 1

## I. FACTUAL AND PROCEDURAL BACKGROUND

The class plaintiffs are all borrowers who engaged in loan transactions with NovaStar Mortgage, Inc. (“NovaStar Mortgage”) and claim to have been deceived by NovaStar Mortgage’s failure to adequately disclose its payment to brokers on good faith estimates. The plaintiffs brought suit alleging that the failure to provide written disclosure of these payments resulted in higher interest rates on their loans and violated Washington’s Consumer Protection Act (“CPA”), 19.86 *et seq.*

On March 27, 2007, the Court held that “the LePage loan constitutes a secondary market transaction to which RESPA does not apply.” Dkt. 140 at 8. The Court further held that summary judgment as to the LePage loan was improper because “the plaintiffs may indeed be able to establish that NovaStar committed an unfair or deceptive act or practice with respect to the LePage loan despite that loan not being subject to RESPA.” *Id.* The Court allowed the parties to submit supplemental briefing to address “whether the Court should **dismiss the LePages** without prejudice so that the case may proceed as a class action or **deny summary judgment** as to the LePages and decertify or redefine the class.” *Id.* at 8-9 (emphasis added).

As invited by the Court, the parties submitted supplemental briefing. Based upon that briefing, the Court denied summary judgment as to the LePages and redefined the class to include secondary market transactions. Dkt. 177 at 5. NovaStar moves for reconsideration of that Order.

## II. DISCUSSION

Local Rule CR 7(h) provides as follows:

Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

1 Local Rule CR 7(h). NovaStar Mortgage contends that the Court's Order Denying Defendant  
2 NovaStar's Motion for Summary Judgment, Granting Plaintiffs' Renewed Motion to Approve  
3 Class Notice and Class Distribution Plan, and Amending Class Definition (Dkt. 177) constitutes  
4 manifest error in two respects. *See* Dkt. 196 at 2.

6 First, NovaStar Mortgage contends that "the Court erred both in failing to rule on the  
7 purely legal issue of whether the CPA applies to secondary market transactions and in concluding  
8 that NovaStar somehow waived its right to challenge that phantom ruling." Dkt. 196 at 7.

10 NovaStar Mortgage apparently misunderstands the Court's March 27, 2007, ruling and  
11 invitation for supplemental briefing. *See* Dkt. 140. NovaStar Mortgage construes the Court's  
12 Order amending the class definition as based on the "apparent belief that (1) [the Court] issued a  
13 ruling that plaintiffs had in fact actually stated a claim under the CPA in the absence of a RESPA  
14 violation; and (2) NovaStar waived it[s] right to challenge that ruling by failing to ask the Court  
15 to reconsider it." Dkt. 196 at 7.

17 The Court held that summary judgment should be denied as to the plaintiffs' claim that the  
18 LePage loan violated the CPA. Dkt. 140 at 8. The Court invited supplemental briefing as to  
19 whether to (1) dismiss the LePages or (2) deny summary judgment as to the LePages and  
20 decertify or redefine the class. *Id.* at 8-9. Having determined that summary judgment should be  
21 denied as to the LePages, the Court did not invite supplemental briefing as to whether summary  
22 should be granted as to the LePages. *See id.*

24 Both parties nevertheless provided such briefing, but the Court declined to revisit its  
25 ruling. The Court addressed the supplemental briefing on this point as follows:

1 This issue was fully briefed before the Court invited supplemental briefing and was not a  
2 subject upon which the Court sought additional briefing. *See* Dkt. 125 at 19-21 (response  
3 addressing whether the LePage loan supports a CPA violation independent from RESPA  
4 disclosure requirements); Dkt. 130 at 9-10 (reply addressing same). The Court ruled,  
5 “Because it appears that the plaintiffs may indeed be able to establish that NovaStar  
6 committed an unfair or deceptive act or practice with respect to the LePage loan despite  
7 that loan not being subject to RESPA, the Court should deny the motion as to the  
8 LePages.” Dkt. 140 at 8. NovaStar Mortgage has not sought reconsideration of this  
9 ruling, and the ruling stands. Whether the LePage loan and similar class loans support a  
10 violation of the CPA independent from statutory disclosure requirements is an issue for  
11 trial.

12 Dkt. 177 at 8. NovaStar Mortgage fails to demonstrate that the question of whether the LePage  
13 loan violates the CPA was an issue before the Court or that the Court committed manifest error  
14 by not modifying its prior ruling on the basis of the parties’ supplemental briefing.

15 Second, NovaStar Mortgage contends that “the Court erred as a matter of law when it  
16 redefined the class to include secondary market transactions . . . because (1) such loans are not  
17 subject to RESPA’s disclosure requirements; (2) plaintiffs have not – and cannot – articulate any  
18 other legal obligation by NovaStar to make the type of disclosures demanded by plaintiffs; and (3)  
19 in the absence of such an obligation, plaintiffs may not properly invoke the CPA as a basis for  
20 liability against NovaStar.” *Id.* NovaStar Mortgage contends that the Court erred in redefining the  
21 class because including secondary market transactions in the class is inconsistent with the Court’s  
22 prior rulings. *See* Dkt. 61 (Plaintiffs contending that “[t]he class does not include secondary  
23 market transactions because the written disclosure requirements for such loans are different.”);  
24 Dkt. 74 at 10 (“In determining whether particular loans fall within or outside the class, secondary  
25 market transactions must be excluded.”).

26 The Court’s “prior rulings” were issued under a different class definition. Before the class  
was redefined, both parties agreed that the class did not include secondary market transactions.

1  
2 See Dkt. 74 at 9. The parties were afforded an opportunity to address whether the class should be  
3 redefined. See Dkt. 140 at 10. Rather than address the plaintiffs' proposed redefinition, NovaStar  
4 Mortgage argued that summary judgment should be granted as to the LePage loan. See Dkt. 172  
5 at 10-14. Absent evidence that modifying the class definition to include such transactions would  
6 be improper, the Court redefined the class. NovaStar Mortgage fails to demonstrate that  
7 redefining the class, despite the fact that secondary market transactions did not fall within the  
8 previous class definition, constitutes manifest error. While the plaintiffs may or may not succeed  
9 on their claim that secondary market transactions similar to the LePage loan were unfair and  
10 deceptive under the CPA, NovaStar Mortgage failed to demonstrate that this claims should not be  
11 litigated as a class claim. The Court should therefore deny the motion.  
12

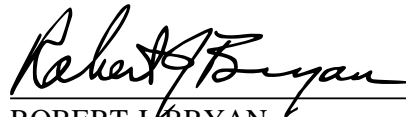
### 13 **III. ORDER**

14  
15 Therefore, it is hereby

16 **ORDERED** that Defendant NovaStar Mortgage, Inc.'s Motion for Reconsideration (Dkt. 196)  
17 is **DENIED**.

18 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
19 record and to any party appearing pro se at said party's last known address.

20 DATED this 7<sup>th</sup> day of May, 2007.

21  
22   
23 ROBERT J. BRYAN  
24 United States District Judge  
25  
26